



General Assembly

February Session, 2010

***Raised Bill No. 222***

LCO No. 1181

\*01181\_\_\_\_\_JUD\*

Referred to Committee on Judiciary

Introduced by:  
(JUD)

***AN ACT CONCERNING COMPLAINTS PENDING IN THE  
DEPARTMENT OF PUBLIC HEALTH AGAINST PHYSICIANS AND  
CERTAIN OTHER HEALTH CARE PROVIDERS AND ESTABLISHING  
A MEDIATION PROGRAM FOR MEDICAL MALPRACTICE ACTIONS.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 19a-14 of the 2010 supplement to the general  
2 statutes is repealed and the following is substituted in lieu thereof  
3 (*Effective October 1, 2010*):

4 (a) The Department of Public Health shall have the following  
5 powers and duties with regard to the boards and commissions listed in  
6 subsection (b) of this section which are within the Department of  
7 Public Health. The department shall:

8 (1) Control the allocation, disbursement and budgeting of funds  
9 appropriated to the department for the operation of the boards and  
10 commissions;

11 (2) Employ and assign such personnel as the commissioner deems  
12 necessary for the performance of the functions of the boards and  
13 commissions;

14 (3) Perform all management functions including purchasing,  
15 bookkeeping, accounting, payroll, secretarial, clerical and routine  
16 housekeeping functions;

17 (4) Adopt, with the advice and assistance of the appropriate board  
18 or commission, and in accordance with chapter 54, any regulations  
19 which are consistent with protecting the public health and safety and  
20 which are necessary to implement the purposes of subsection (a) of  
21 section 2c-2b, this chapter, and chapters 368v, 369 to 375, inclusive, 378  
22 to 381, inclusive, 383 to 388, inclusive, 398 and 399;

23 (5) Develop and perform all administrative functions necessary to  
24 process applications for licenses and certificates;

25 (6) Determine the eligibility of all applicants for permits, licensure,  
26 certification or registration, based upon compliance with the general  
27 statutes and administrative regulations. The department may deny the  
28 eligibility of an applicant for a permit or for licensure by examination,  
29 endorsement, reciprocity or for reinstatement of a license voided  
30 pursuant to subsection (f) of section 19a-88, or may issue a license  
31 pursuant to a consent order containing conditions that must be met by  
32 the applicant if the department determines that the applicant:

33 (A) Has failed to comply with the general statutes and  
34 administrative regulations governing [his] the applicant's profession;

35 (B) Has been found guilty or convicted as a result of an act which  
36 constitutes a felony under (i) the laws of this state, (ii) federal law or  
37 (iii) the laws of another jurisdiction and which, if committed within  
38 this state, would have constituted a felony under the laws of this state;

39 (C) Is subject to a pending disciplinary action or unresolved  
40 complaint before the duly authorized professional disciplinary agency  
41 of any state, the District of Columbia, a United States possession or  
42 territory, or a foreign jurisdiction;

43 (D) Has been subject to disciplinary action similar to an action

44 specified in subsection (a) of section 19a-17 by a duly authorized  
45 professional disciplinary agency of any state, the District of Columbia,  
46 a United States possession or territory, or a foreign jurisdiction;

47 (E) Has committed an act which, if the applicant were licensed,  
48 would not conform to the accepted standards of practice of the  
49 profession, including, but not limited to, incompetence, negligence,  
50 fraud or deceit; illegal conduct; procuring or attempting to procure a  
51 license, certificate or registration by fraud or deceit; or engaging in,  
52 aiding or abetting unlicensed practice of a regulated profession,  
53 provided the commissioner, or [his] the commissioner's designee, gives  
54 notice and holds a hearing, in accordance with the provisions of  
55 chapter 54, prior to denying an application for a permit or a license  
56 based on this subparagraph; or

57 (F) Has a condition which would interfere with the practice of [his]  
58 the applicant's profession, including, but not limited to, physical illness  
59 or loss of skill or deterioration due to the aging process, emotional  
60 disorder or mental illness, abuse or excessive use of drugs or alcohol,  
61 provided the commissioner, or [his] the commissioner's designee, gives  
62 notice and holds a hearing in accordance with the provisions of  
63 chapter 54, prior to denying an application for a permit or a license  
64 based on this subparagraph;

65 (7) Administer licensing examinations under the supervision of the  
66 appropriate board or commission;

67 (8) Develop and perform all administrative functions necessary to  
68 process complaints against persons licensed by the department;

69 (9) Consent to the approval or disapproval by the appropriate  
70 boards or commissions of schools at which educational requirements  
71 shall be met;

72 (10) Conduct any necessary review, inspection or investigation  
73 regarding qualifications of applicants for licenses or certificates,

74 possible violations of statutes or regulations, and disciplinary matters.  
75 In connection with any investigation, the Commissioner of Public  
76 Health or [said] the commissioner's authorized agent may administer  
77 oaths, issue subpoenas, compel testimony and order the production of  
78 books, records and documents. If any person refuses to appear, to  
79 testify or to produce any book, record or document when so ordered, a  
80 judge of the Superior Court may make such order as may be  
81 appropriate to aid in the enforcement of this section;

82 (11) Conduct any necessary investigation and follow-up in  
83 connection with complaints regarding persons subject to regulation or  
84 licensing by the department;

85 (12) With respect to any complaint filed with the department on or  
86 after October 1, 2010, alleging incompetence, negligence, fraud or  
87 deceit by a person subject to regulation or licensing by any board or  
88 commission described in subdivision (1) to (5), inclusive, (7), (8), (12) to  
89 (14), inclusive, or (16) of subsection (b) of this section:

90 (A) Upon request of the person who filed the complaint, provide  
91 such person with information on the status of the complaint;

92 (B) Upon request of the person who filed the complaint, provide  
93 such person with an opportunity to review, at the department, records  
94 compiled as of the date of the request pursuant to any investigation of  
95 the complaint, including, but not limited to, the respondent's written  
96 response to the complaint, except that such person shall not be entitled  
97 to copy such records and the department (i) shall not disclose (I)  
98 information concerning a health care professional's referral to,  
99 participation in or completion of an assistance program in accordance  
100 with sections 19a-12a and 19a-12b, that is confidential pursuant to  
101 section 19a-12a, (II) information not related to such person's specific  
102 complaint, including, but not limited to, information concerning  
103 patients other than such person, or (III) personnel or medical records  
104 and similar files the disclosure of which would constitute an invasion  
105 of personal privacy pursuant to section 1-210, except for such records

106 or similar files solely related to such person; (ii) shall not be required to  
107 disclose any other information that is otherwise confidential pursuant  
108 to federal law or state statute, except for information solely related to  
109 such person; and (iii) may require up to ten business days written  
110 notice prior to providing such opportunity for review;

111 (C) Prior to resolving the complaint with a consent order, provide  
112 the person who filed the complaint with not less than ten business  
113 days to submit a written statement as to whether such person objects  
114 to resolving the complaint with a consent order;

115 (D) If a hearing is held with respect to such complaint after a finding  
116 of probable cause, provide the person who filed the complaint with a  
117 copy of the notice of hearing issued pursuant to section 4-177, which  
118 shall include information concerning the opportunity to present oral or  
119 written statements pursuant to subsection (b) of section 4-177c; and

120 (E) Notify the person who filed the complaint of the final  
121 disposition of such complaint not later than seven business days after  
122 such final disposition;

123 [(12)] (13) Perform any other function necessary to the effective  
124 operation of a board or commission and not specifically vested by  
125 statute in the board or commission;

126 [(13)] (14) Contract with a third party, if the commissioner deems  
127 necessary, to administer licensing examinations and perform all  
128 attendant administrative functions in connection with such  
129 examination.

130 (b) The department shall have the powers and duties indicated in  
131 subsection (a) of this section with regard to the following professional  
132 boards and commissions:

133 (1) The Connecticut Medical Examining Board, established under  
134 section 20-8a;

135 (2) The Connecticut State Board of Examiners for Optometrists,  
136 established under subsections (a) to (c), inclusive, of section 20-128a;

137 (3) The Connecticut State Board of Examiners for Nursing,  
138 established under section 20-88;

139 (4) The Dental Commission, established under section 20-103a;

140 (5) The Board of Examiners of Psychologists, established under  
141 section 20-186;

142 (6) The Connecticut Board of Veterinary Medicine, established  
143 under section 20-196;

144 (7) The Connecticut Homeopathic Medical Examining Board,  
145 established under section 20-8;

146 (8) The Connecticut State Board of Examiners for Opticians,  
147 established under subsections (a) to (c), inclusive, of section 20-139a;

148 (9) The Connecticut State Board of Examiners for Barbers and  
149 Hairdressers and Cosmeticians, established under section 20-235a;

150 (10) The Connecticut Board of Examiners of Embalmers and Funeral  
151 Directors established under section 20-208;

152 (11) Repealed by P.A. 99-102, S. 51;

153 (12) The State Board of Natureopathic Examiners, established under  
154 section 20-35;

155 (13) The State Board of Chiropractic Examiners, established under  
156 section 20-25;

157 (14) The Connecticut Board of Examiners in Podiatry, established  
158 under section 20-51;

159 (15) The Board of Examiners of Electrologists, established under  
160 section 20-268; and

161 (16) The Connecticut State Board of Examiners for Physical  
162 Therapists.

163 (c) No board shall exist for the following professions that are  
164 licensed or otherwise regulated by the Department of Public Health:

165 (1) Speech and language pathologist and audiologist;

166 (2) Hearing instrument specialist;

167 (3) Nursing home administrator;

168 (4) Sanitarian;

169 (5) Subsurface sewage system installer or cleaner;

170 (6) Marital and family therapist;

171 (7) Nurse-midwife;

172 (8) Licensed clinical social worker;

173 (9) Respiratory care practitioner;

174 (10) Asbestos contractor and asbestos consultant;

175 (11) Massage therapist;

176 (12) Registered nurse's aide;

177 (13) Radiographer;

178 (14) Dental hygienist;

179 (15) Dietitian-Nutritionist;

180 (16) Asbestos abatement worker;

181 (17) Asbestos abatement site supervisor;

182 (18) Licensed or certified alcohol and drug counselor;

183 (19) Professional counselor;

184 (20) Acupuncturist;

185 (21) Occupational therapist and occupational therapist assistant;

186 (22) Lead abatement contractor, lead consultant contractor, lead  
187 consultant, lead abatement supervisor, lead abatement worker,  
188 inspector and planner-project designer;

189 (23) Emergency medical technician, advanced emergency medical  
190 technician, emergency medical responder and emergency medical  
191 services instructor;

192 (24) Paramedic;

193 (25) Athletic trainer;

194 (26) Perfusionist; and

195 (27) On and after July 1, 2011, a radiologist assistant, subject to the  
196 provisions of section 20-74tt.

197 The department shall assume all powers and duties normally vested  
198 with a board in administering regulatory jurisdiction over such  
199 professions. The uniform provisions of this chapter and chapters 368v,  
200 369 to 381a, inclusive, 383 to 388, inclusive, 393a, 395, 398, 399, 400a  
201 and 400c, including, but not limited to, standards for entry and  
202 renewal; grounds for professional discipline; receiving and processing  
203 complaints; and disciplinary sanctions, shall apply, except as otherwise  
204 provided by law, to the professions listed in this subsection.

205 (d) Except as provided in section 20-13e, as amended by this act, all  
206 records obtained by the department in connection with any  
207 investigation of a person or facility over which the department has  
208 jurisdiction under this chapter, other than a physician as defined in  
209 subdivision (5) of section 20-13a, shall not be subject to disclosure  
210 under section 1-210 for a period of one year from the date of the



211 petition or other event initiating such investigation, or until such time  
 212 as the investigation is terminated pursuant to a withdrawal or other  
 213 informal disposition or until a hearing is convened pursuant to chapter  
 214 54, whichever is earlier. A complaint, as defined in subdivision (6) of  
 215 section 19a-13, shall be subject to the provisions of section 1-210 from  
 216 the time that it is served or mailed to the respondent. Records [which]  
 217 that are otherwise public records shall not be deemed confidential  
 218 merely because they have been obtained in connection with an  
 219 investigation under this chapter. Records disclosed to a person who  
 220 files a complaint pursuant to subdivision (12) of subsection (a) of this  
 221 section that are otherwise confidential shall not be deemed public  
 222 records merely because they have been disclosed pursuant to said  
 223 subdivision (12).

224 Sec. 2. Section 20-13e of the general statutes is repealed and the  
 225 following is substituted in lieu thereof (*Effective October 1, 2010*):

226 (a) The department shall investigate each petition filed pursuant to  
 227 section 20-13d, in accordance with the provisions of [subdivision]  
 228 subdivisions (10) and (11) of subsection (a) of section 19a-14, as  
 229 amended by this act, to determine if probable cause exists to issue a  
 230 statement of charges and to institute proceedings against the physician  
 231 under subsection (d) of this section. Such investigation shall be  
 232 concluded not later than eighteen months from the date the petition is  
 233 filed with the department and, unless otherwise specified by this  
 234 subsection, the record of such investigation shall be deemed a public  
 235 record, in accordance with section 1-210, at the conclusion of such  
 236 eighteen-month period. Any such investigation shall be confidential  
 237 and no person shall disclose his knowledge of such investigation to a  
 238 third party unless the physician requests that such investigation and  
 239 disclosure be open, except that the department shall provide  
 240 information to the person who filed the complaint pursuant to  
 241 subdivision (12) of subsection (a) of section 19a-14, as amended by this  
 242 act. If the department determines that probable cause exists to issue a  
 243 statement of charges, the entire record of such proceeding shall be

244 public unless the department determines that the physician is an  
245 appropriate candidate for participation in [a rehabilitation] an  
246 assistance program in accordance with the provisions of sections 19a-  
247 12a and 19a-12b. The petition and all records of any physician  
248 determined to be eligible for participation in [a rehabilitation] an  
249 assistance program prior to June 11, 2007, shall remain confidential  
250 during the physician's participation and upon successful completion of  
251 the [rehabilitation] assistance program, in accordance with the terms  
252 and conditions agreed upon by the physician and the department. If at  
253 any time subsequent to the filing of a petition and during the eighteen-  
254 month period, the department makes a finding of no probable cause,  
255 the petition and the entire record of such investigation shall remain  
256 confidential, except as provided in subdivision (12) of subsection (a) of  
257 section 19a-14, as amended by this act, unless the physician requests  
258 that such petition and record be open.

259 (b) As part of an investigation of a petition filed pursuant to  
260 subsection (a) of section 20-13d, the Department of Public Health may  
261 order the physician to submit to a physical or mental examination, to  
262 be performed by a physician chosen from a list approved by the  
263 department. The department may seek the advice of established  
264 medical organizations or licensed health professionals in determining  
265 the nature and scope of any diagnostic examinations to be used as part  
266 of any such physical or mental examination. The examining physician  
267 shall make a written statement of his or her findings.

268 (c) If the physician fails to obey a department order to submit to  
269 examination or attend a hearing, the department may petition the  
270 superior court for the judicial district of Hartford to order such  
271 examination or attendance, and said court or any judge assigned to  
272 said court shall have jurisdiction to issue such order.

273 (d) Subject to the provisions of section 4-182, no license shall be  
274 restricted, suspended or revoked by the board, and no physician's  
275 right to practice shall be limited by the board, until the physician has

276 been given notice and opportunity for hearing in accordance with the  
277 regulations established by the commissioner.

278       Sec. 3. (NEW) (*Effective July 1, 2010*) (a) There shall be mandatory  
279 mediation for all civil actions brought to recover damages resulting  
280 from personal injury or wrongful death, whether in tort or in contract,  
281 in which it is alleged that such injury or death resulted from the  
282 negligence of a health care provider. Each such civil action for which a  
283 valid certificate has been filed pursuant to section 52-190a of the  
284 general statutes shall be referred to mandatory mediation pursuant to  
285 subsection (b) of this section, unless the civil action is referred to  
286 another alternative dispute resolution program agreed to by the  
287 parties. Mandatory mediation under this section shall be conducted for  
288 the purpose of achieving a prompt settlement or resolution of the civil  
289 action. For the purposes of this section, "health care provider" means a  
290 provider, as defined in subsection (b) of section 20-7b of the general  
291 statutes, an institution, as defined in section 19a-490 of the general  
292 statutes, or any other health care provider described in subsection (a)  
293 of section 52-184b of the general statutes.

294       (b) Prior to the close of pleadings in such civil action, the presiding  
295 judge of the civil session of the court of the judicial district in which  
296 the action is pending shall refer the action to mandatory mediation or  
297 any other alternative dispute resolution program agreed to by the  
298 parties. The duration of the referral shall not exceed one hundred  
299 twenty days unless the court, for good cause shown, extends the  
300 duration of the referral. The court shall stay the time periods within  
301 which all further pleadings, motions, requests, discovery and other  
302 procedures must be filed or undertaken, including, but not limited to,  
303 filings under section 52-192a of the general statutes, except with  
304 respect to any apportionment complaint under section 52-102b of the  
305 general statutes.

306       (c) Mediation under this section shall begin as soon as practicable,  
307 but not later than twenty business days after the date the action is

308 referred under subsection (b) of this section. The first mediation  
309 session shall be conducted by the presiding judge or, at the discretion  
310 of the presiding judge, a different judge of the superior court or a  
311 senior judge or judge trial referee. At the first mediation session, the  
312 judge conducting the mediation session shall determine whether the  
313 action can be resolved at such mediation session, or, if the action  
314 cannot be resolved at that mediation session, whether the parties agree  
315 to participate in further mediation. If the action is not resolved at the  
316 first mediation session and the parties do not agree to further  
317 mediation, mandatory mediation under this section shall end. If the  
318 action is not resolved at the first mediation session and the parties  
319 agree to further mediation, the presiding judge of such civil session  
320 shall refer the action for mediation before an attorney who has  
321 experience as an attorney related to such civil actions and who has  
322 been a member of the bar of the state of Connecticut for at least five  
323 years. Upon such referral, mediation shall begin as soon as practicable,  
324 but not later than twenty business days after the referral. Fifty per cent  
325 of the cost of such mediation shall be paid by the plaintiffs, and fifty  
326 per cent of the cost of such mediation shall be apportioned among all  
327 defendants who are parties to the mediation.

328 (d) Each party to such action, and a representative of each insurer  
329 that may be liable to pay a claim on behalf of a defendant pursuant to  
330 such action, shall appear in person at each mediation session, unless  
331 participation by telephone or electronic means is permitted by the  
332 judge or mediator.

333 (e) If such mediation does not settle or conclude the civil action, and  
334 if all parties in attendance at such mediation agree, the mediator and  
335 all such parties may file a stipulation with the court setting forth any  
336 matter or conclusion that the parties and the mediator believe may be  
337 useful or relevant to narrow the issues, expedite discovery or assist the  
338 parties in preparing the civil action for trial.

339 (f) The judges of the Superior Court may adopt such rules as they

340 deem necessary for the conduct of mediation pursuant to this section.  
341 Such rules shall be adopted in accordance with section 51-14 of the  
342 general statutes.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2010</i>	19a-14
Sec. 2	<i>October 1, 2010</i>	20-13e
Sec. 3	<i>July 1, 2010</i>	New section

***Statement of Purpose:***

To (1) permit a person who files a complaint with the Department of Public Health alleging incompetence, negligence, fraud or deceit by a health care provider to obtain information about the status of the complaint, notice of any scheduled hearing or proposed consent order with respect to the complaint, and notice of the final disposition of the complaint, and (2) establish a mediation program for medical malpractice actions.

*[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]*